



San Diego City Attorney MICHAEL J. AGUIRRE

NEWS RELEASE

FOR IMMEDIATE RELEASE: December 21, 2004

Contact: Maria Velasquez, Press Secretary: (619) 235-5725 (pager & voicemail) mvelasquez@sandiego.gov

CITY ATTORNEY ISSUES COUNCIL REPORT; CONDITIONS FOR PAYMENT OF LEGAL FEES FOR CITY WITNESSES IN THE SEC INVESTIGATION

City Attorney Michael Aguirre issued a legal opinion today, advising that the City Council may authorize payment of legal fees under certain conditions for city witnesses in the U.S. Securities & Exchange Commission (SEC) investigation. The city may refuse to pay such legal fees if: (i) the witness-employee's act or omission at issue was not within the scope of the witnesses' employment; (ii) the witness acted or failed to act because of actual fraud, corruption or actual malice; or (iii) providing such legal fees would create a specific conflict of interest between the public entity and the employee or former employee.

The City may pay for the legal expenses of the seven city employee witnesses appearing before the SEC on the condition that if any are found to have acted fraudulently or corruptly the City would be reimbursed by the offending employee-witness. The City can secure the required repayment by having the employee-witness execute a conditional assignment of assets to the City.

The City Council is meeting today to determine whether to provide \$150,000 to pay for legal fees for the 7 present and former city officials that were subpoenaed by the SEC. Those subpoenas were issued on December 16, 2004. City witnesses have been summoned to testify under oath on various dates in February 2005. At this stage of the proceedings no findings of fraud or corruption have been found against any employee of the City of San Diego.

Today's special meeting of the City Council will also include authorizing Vinson & Elkins to share with the SEC, the U.S. Attorney and KPMG its memoranda of interviews conducted and to be conducted in relation to the audit of the City's financial statements for 2003. The City Council also will consider authorizing KPMG personnel to participate in any such interviews or related matters.

###